



UNITED STATES PATENT AND TRADEMARK OFFICE

ME
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/683,003

11/07/2001

Shiguang Yu

6601-00

5003

49144

7590

07/24/2006

HARNESS, DICKEY & PIERCE, P.L.C.

7700 BONHOMME

SUITE 400

ST LOUIS, MO 63105

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 07/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/683,003	Applicant(s) YU ET AL.	
	Examiner Frank I. Choi	Art Unit 1616	


--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 10 May 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☒ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See attached.


 JOHANN RICHTER
 SUPERVISORY PATENT EXAMINER
 GROUP 1200

Art Unit: 1616

NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR

41.36(c).

The brief does not contain the items of the brief required by 37 CFR 41.37(c) under the appropriate headings and/or in the order indicated.

The following sections are missing from the Appeal Brief filed:

(1) "Status of claims", as set forth in 37 CFR Section 41.37(c)(1)(iii) – the status of claim 1 is not set forth.

(2) "Claims appendix," as set forth in 37 CFR Section 41.37(c)(1)(viii) – Only the appealed claims should be set forth without status modifiers. Claim 1 is cancelled, as such, it clearly cannot be listed as an appealed claim.

(3) "Evidence appendix," as set forth in 37 CFR Section 41.37(c)(1)(ix) -The appendix should start on a new page. If there is no evidence being relied upon by appellant in the appeal, then an evidence appendix should be included with the indication "none.";

(4) "Related proceedings appendix", as set forth in 37 CFR Section 41.37(c)(1)(x) - The appendix should start on a new page. If there are no such copies of decisions being submitted in the appeal, then a related proceedings appendix should be included with the indication "none.".

(5) Reference to unentered evidence is not permitted in the brief. See 37 CFR 41.33. – Applicant provides evidence (albeit unsupported evidence) as to what a 20 kg animal would consume, the approximate number of Kcal in pet and similar animal foods, the causes of alopecia and the correlation between hair loss and selenium (Brief (5/10/2006) at pages 6, 9 11). This unsupported evidence was not previously set forth in any prior response and is set for the first time in the appeal brief.

Art Unit: 1616

Accordingly, the Appeal Brief filed 5/10/2006 does not comply with the new rules under 37 CFR Section 41.37(c). For more information on the Board's new rules, please see the web page entitled, "More information on the Rules of Practice Before the BPAI," Final rule at: <http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

Conclusion

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is 571-273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (571)272-0610. Examiner maintains a compressed schedule and may be reached Monday, Tuesday, Thursday, Friday, 6:00 am – 4:30 pm (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Dr. Johann Richter, can be reached at (571)272-0646. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frank Choi
Patent Examiner
Technology Center 1600
July 18, 2006

Johann Richter, Ph. D. Esq.
Supervisory Patent Examiner
Technology Center 1600